

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FREDERICK HEINZ,

Plaintiff,

Case No. 05-CV-73470

vs.

HON. GEORGE CARAM STEEH

LELAND TESCHENDORF, et al.,

Defendants.

_____/

ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AND DISMISSING COMPLAINT

This matter is one in which *pro se* plaintiff Frederick Heinz, an inmate with the Michigan Department of Corrections, alleges he was subjected to cruel and unusual punishment in violation of the Eighth Amendment during periods of pre-trial detention at the Tuscola County Jail. Specifically, plaintiff contends that he was not permitted out-of-cell exercise time and that he was denied a nutritionally adequate diet while incarcerated there.

As provided by 28 U.S.C. § 636(b)(1)(B) and E.D. Mich. LR 72.1(b)(2), the case was assigned to Magistrate Judge Morgan for pre-trial proceedings. Before the court is the magistrate's report and recommendation, filed August 1, 2006, recommending dismissal of plaintiff's complaint.

In Magistrate Morgan's Report and Recommendation, the conclusion section clearly stated that objections to her report and recommendation were to be filed within 10 days of service of a copy thereof. 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b). However, plaintiff has filed no objections to the report and recommendation to date.

The failure to file such objections waives a party's right to further appeal. Howard v. Secretary of Health & Human Services, 932 F.2d 505 (6th Cir. 1991). Also see U.S. v. Campbell, 261 F.3d 628, 631-32 (6th Cir. 2001) (citing Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984), *aff'd* 474 U.S. 140 (1985)).

The court has considered the plaintiff's complaint and the report and recommendation of the magistrate in this matter. The court is in agreement that the plaintiff simply has not established a question of material fact as to liability under § 1983 for the individual or municipal defendants in this case. Accordingly, for the reasons stated in the thorough and well-reasoned report and recommendation of Magistrate Judge Morgan, defendant's motion is granted and plaintiff's complaint is hereby DISMISSED in its entirety.

IT IS SO ORDERED.

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: September 19, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on September 19, 2006, by electronic and/or ordinary mail.

S/Josephine Chaffee
Secretary/Deputy Clerk